Mr. Cesar DeLeon
Associate Director for
Pipeline Safety Regulations
Materials Transportation Bureau
Department of Transportation
Washington, D. C. 20590

Dear Mr. DeLeon:

Please excuse the delay in this response to your letter of October 11, 1978 requesting more information concerning the Offshore Operators Committee's suggestion that the memorandum of Understanding (MON) between the Department of Transportation and the Department of the Interior on Offshore pipeline jurisdictions be reviewed under the regulatory reform policy of Executive Order 12044. We have been busy of late commenting on new regulatory proposals. The following information was prepared by a committee of personnel knowledgeable on Offshore production pipelines. Please note that the views are based on actual experiences in the Gulf of Mexico only.

When the extension of 49 CFR Parts 192 and 195 to cover Offshore gathering lines was proposed by the DOT in 1975, neither proposal addressed the fact that offshore gathering lines operated by oil and gas producers, as distinguishable from common carrier pipeline companies, were already regulated on the Outer Continental Shelf (OCS) by the U.S. Geological Survey (USGS) according to its rules in 30 CFR 250.18 and 250.19 and OCS Order Number 9. Under those rules, which are still in effect, the USGS (1) grants lessees rights of use or easements to construct and maintain pipelines; and (2) approves the design, other features, and plan of installation of all producer operated pipelines. The potential for overlapping jurisdictions was recognized, however, and the MOU signed on May 6, 1976 was designed to eliminate duplication of regulatory efforts.

Unfortunately, the MOU does not anticipate all of the various situations set up by pipelines constructed by producers on their offshore leases. This lack of specifically in the MOU, coupled with the fact that DOT subsequently used different language to describe its jurisdiction when it promulgated the amended Parts 192 and 195, has led to a confusing array of jurisdictional interpretations among producers. Wording in Section II of the MOU describes an outlet flange to define the upstream limit of DOT pipeline jurisdiction. When the outlet flange was described in 192.1(b((1) and 195.1(b)(5), however, the phrase "extending to shore" was not included and the phrase "on the Outer Continental Shelf" was added. The difference in language in the MOU and the DOT regulations also leads to different interpretations of applicability of the regulations to pipelines located wholly in State waters. Do the "outlet flange," extending to shore," "first

separated, dehydrated, or otherwise processed," and "farthest downstream" criteria set forth in the MOU determine applicability in State waters too? We have not attempted to document all of the various interpretive problems that producers have encountered as the result of lack of specifically in the MOU and different wording in the regulations, but three example cases are described in the attachments to illustrate the point.

Other problems in determining DOT jurisdiction also relate to ambiguous wording or lack of coverage in either the MOU or the regulations. For example, it is common practice to use small volumes of produced gas to operate instruments, safety devices, and small pumps at production platforms. Possible interpretation is that removal of this minor quantity of gas from the production stream constitutes "separation" for the jurisdictional determination even though the principal separation, dehydration, or other processing occurs at a facility farther downstream. This could lead to many "upstream" gathering lines being considered under DOT jurisdiction even though the intent of the MOU was to place them entirely under the DOT. This situation can be further complicated by adding the condition that the gas may be needed only a short time or emergency basis. Due to a lack of coverage, it is not clear which Part of 49 CFR applies to pipelines carrying both oil and gas at the same tine.

Our statement that the MOU has not eliminated duplication of regulations reflects the fact that the USGS still applies all of its pipeline regulations to each producer operated pipeline on the OCS, even though a particular pipeline may be regulated by the DOT.

Although the MOU may not be a regulation that is subject to review under Executive Order 12044, its existence has created considerable uncertainty concerning applicability of DOT and USGS regulations to offshore pipelines operated by oil and gas producers. Revision of the MOU to eliminate its ambiguity and to insure that overlapping of regulations is eliminated seems appropriate. As an alternative, detailed guidelines to assist producers in determining applicability of Parts 192 and 195 are needed. In either case, the OOC offers its assistance in providing any additional technical information that may be needed.

Your very truly,

L. G. Otteman
Chairman
Offshore Operators Committee

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